

*Statement of*

Michael S. Steele, Lieutenant Governor  
State of Maryland

*before the*

United States House of Representatives  
Committee on Government Reform  
Subcommittee on Criminal Justice, Drug Policy and Human Resources  
Baltimore, Maryland 21201

May 2, 2005

Chairman Souder, members of the Subcommittee: I appreciate the opportunity to appear before the Subcommittee today, on behalf of Governor Robert L. Ehrlich, Jr., on the subject of witness intimidation. Governor Ehrlich extends his personal and sincere thanks to the members of this Subcommittee, many of his old Congressional colleagues, for your willingness to engage in a meaningful discussion about the appropriate federal, state, and local responses to the insidious problem of witness intimidation. Congressman Cummings: thank you for gathering your colleagues here today. The Ehrlich-Steele Administration also wishes to thank Baltimore City State's Attorney Patricia C. Jessamy and Reverend Iris Tucker for partnering with us to champion the cause of witness intimidation legislative reform. We also acknowledge Mayor Martin O'Malley and Baltimore City Police Commissioner Leonard Hamm for sending representatives to testify in support of Governor Ehrlich's witness intimidation legislation, and also appreciate Mr. David Wright's testimony before the Maryland Senate Judiciary Proceedings Committee.

In truth, the Governor and I would much prefer that today's field hearing take place elsewhere, not in Baltimore City and not in Maryland. Unfortunately, however, the HBO cable drama, "The Wire," is tantamount to reality television in certain parts of Baltimore City. Indeed, Baltimore City continues its high level of homicides with 253 in 2002, 278 last year, and 73 so far this year. And, that is why you are here near the epicenter of witness intimidation and violence in Maryland.

Too many individuals in this City live in a state of persistent fear, while brazen, violent criminals patrol the streets unafraid and intent on enforcing vigilante justice. As the members of this subcommittee are aware, the problem of witness intimidation is not simply a Baltimore City problem. It effects other areas in Maryland, particularly my home county of Prince George's County near the Washington D.C. border, and other communities where drugs and gangs proliferate.

Thus, in a growing number of cases throughout Maryland, police and prosecutors are frustrated by their inability to investigate and prosecute cases because witnesses refuse to provide critical

evidence or are unwilling to testify due to fear of violent reprisals. Recent incidents demonstrate that this fear is not unfounded:

- In 1997, Amy Lynn Fischer, 26, a clerk in an Annapolis area photo store, was scheduled to appear as a witness in a shoplifting case involving two packs of film worth \$35.98. The night before the trial, the defendant shot Ms. Fischer and her sister as they pulled into their driveway.
- In 2002, a drug dealer admitted to setting fire to the Dawson's family's home in retaliation for the family's reported calls to police about drug dealing in their neighborhood. The resulting fire claimed the lives of Carnell Dawson, Angela Dawson and their five young children.
- In November 2002, Baltimore City Police Detective Thomas Newman was assassinated in retaliation for testifying against the half brother of one of his killers, who was put on trial for wounding Newman in a 2001 shooting.
- Rickey Prince, a 17-year-old Baltimore County homicide witness, was kidnapped and shot in the head by two friends of the murderer in 2003.
- Tjane C. Marshall, the murderer of a pregnant Howard County woman, told witness Rashall Wall that he would be killed if he testified. The victim was found shot four times in the face, lying in bed at her suburban apartment in Columbia's Oakland Mills Village in May 2003.
- In January 2004, four men barged into Anthony Black's home, pointed their guns at his fiancé and 10-year-old son, and threatened to kill them if Black testified about their East Baltimore drug ring.
- On July 14, 2004, Tashiera Peterson, an 11-year-old girl, spent her birthday in court recounting the murder of her father. The 19-year-old man who allegedly perpetrated the shooting death of her father is accused of ordering a hit on Tashiera and her mother to keep them from testifying.
- In December, a DVD called "Stop Snitching" surfaced on the streets of Baltimore City with a chilling admonition by drug dealers and other criminals that if you witness a crime, keep your mouth shut – or else!!! The DVD shows young men smoking marijuana, waving guns and proclaiming "He's a rat...He's a snitch ... He's dead."
- Four months ago, five men and one juvenile firebombed a home of a community activist in Baltimore as retaliation for the woman informing authorities about drug trafficking in her neighborhood.

Deficiencies in Maryland's laws and evidentiary rules also contributed to this escalation in witness intimidation. Currently, the crime of witness intimidation in Maryland is a misdemeanor offense punishable by a maximum penalty of five years in prison. Of course, that is not

commensurate with the severity of the crime. Indeed, if a criminal is able to silence a witness' testimony in the case of a violent felony crime, the same witness certainly would not testify in a prosecution where the maximum exposure of the defendant is a five-year misdemeanor. By comparison, in the District of Columbia, a person convicted of obstruction of justice shall be sentenced to a maximum period of incarceration of not less than three years and not more than thirty, or shall be fined no more than \$10,000, or both (D.C. Code, Section 22-722). Last year, Virginia Governor Mark R. Warner signed legislation that subjects a person who obstructs or impedes the administration of justice in any court relating to a felony violation or conspiracy to violate such an offense, to an enhanced penalty of ten years (Virginia Code, Section 18.2-460). Under Virginia law, a felon must serve at least 85% of his or her sentence. The Federal Government may impose a maximum penalty of ten years for witness tampering.

Additionally, solicitation and conspiracy to commit witness intimidation are not even statutory crimes in Maryland. Further, there is also a huge payoff for the crime of witness intimidation: kill or otherwise silence a witness to your crime and his or her incriminating statement to police and to the grand jury is inadmissible at trial. This means that a criminal defendant who kills a witness silences that witness entirely.

In response to repeated instances of witness intimidation and ineffective laws that threaten the underpinning of law enforcement and criminal justice in Maryland, the Ehrlich-Steele Administration, joined by Baltimore City State's Attorney Patricia C. Jessamy, launched an effort that began in 2003 to toughen Maryland's witness intimidation laws. Reverend Tucker also rallied the faith community and advanced the cause of witness intimidation legislation a significant degree.

I am glad to report that the Maryland General Assembly passed Governor Ehrlich's witness legislation at the end of the recently completed 2005 session. Although a powerful committee Chairman led an effort to scale-down the Governor's bill and obstructed the full enactment of a hearsay exception modeled after Federal Rule 804(b)(6), the approved legislation still permits:

- (1) prosecutors to seek a maximum penalty of twenty years for individuals who solicit others, conspire with others, or commit witness intimidation if the underlying crime is a felonious drug violation or an enumerated crime of violence under Criminal Law Article, Section 14-101 of the Annotated Code of Maryland; and
- (2) the admission of a hearsay statement, written or recorded, of a threatened or murdered witness against the defendant that attempted or did produce the absence of the witness in a felony drug or violent crime case as defined in Criminal Law Article, Section 14-101 of the Annotated Code of Maryland.

These legislative reforms are not a panacea to the problem of witness intimidation but significantly improve Maryland law to help prosecutors and police combat criminal gangs and other violent criminals that have destroyed too many lives and too many communities in Maryland. As Governor Ehrlich has stated, we remain committed to continuing our examination of the criminal laws in Maryland to ensure that State's Attorney Jessamy, Commissioner Hamm, and their colleagues have the necessary legal tools to make our communities safer.

Some have criticized the Ehrlich-Steele Administration for focusing too much energy on amending Maryland law instead of addressing a perceived weakness in the State's Witness Protection and Relocation Fund, one of a handful of such programs that exist nationwide. Such criticism is misplaced. If you are able to dismantle criminal gangs and put those individuals in prison for significant terms of confinement, as the Governor's legislation empowers prosecutors to do in certain cases, you eliminate the threat against the witness permanently, assuming some gang members are not permitted to walk free. That is the best witness protection program. By bringing the full force of law against criminal gangs, we can permanently change the culture of intimidation in many communities.

That said, Maryland's Victim and Witness Protection and Relocation Fund (the Fund) is an important part of criminal prosecution in Maryland. As emphasized by Congressman Bill McCollum in 1996, "It has long been recognized that in order to prosecute [drug dealers and criminal gangs] more effectively, prosecutors must be able to encourage witnesses to testify and one of the important ways of doing so is by offering protection before, during, after the judicial proceedings when witnesses fear retaliatory action by defendants or associates [of the defendant]." See Opening Statement of Chairman McCollum, *Field hearing on Witness Protection Programs in America*, Subcommittee on Crime, U.S. House of Representatives Committee on the Judiciary at [http://commdocs.house.gov/committees/judiciary/hju57652.000/hju57652\\_0.HTM](http://commdocs.house.gov/committees/judiciary/hju57652.000/hju57652_0.HTM) (November 7, 1996). The fund was created to protect crime victims and witnesses and their families, and to relocate them for their own protection or to facilitate their participation in court proceedings. It is administered by the Maryland State's Attorneys' Association and is funded from a portion of defendants' court costs. The state's attorneys in Maryland's twenty-three counties and Baltimore City can request \$10,000 at a time from the fund as needed to support individualized witness assistance programs. There is no limit to the number of withdrawals a state's attorney can make. State's attorneys in Maryland used less than \$400,000 from the fund last fiscal year.

Maryland's Victim and Witness Protection and Relocation Fund and other similar programs in other states suffer from the same issues: (1) witnesses rarely want to leave their homes and communities; (2) many witnesses are also criminal defendants; (3) the services that local law enforcement agencies are able to provide are limited in duration (until trial) and geography, unlike the Federal Witness Protection Program; and (4) lack of coordination between local law enforcement and interstate witness relocation activities. That is why Governor Ehrlich, as a member of Congress, strongly supported the Witness Protection and Interstate Relocation Act of 1997 (WPIRA) (H.R. 2181), introduced by Congressman McCollum. WPIRA would have directed the Attorney General to: (1) survey all State and selected local witness protection and relocation programs to determine and report to the Congress on the extent, nature, and training needs of such programs and (2) make available training to assist State and local law enforcement agencies in developing and managing witness protection and relocation programs. Additionally, WPIRA would have required the Attorney General to: (1) engage in activities which promote coordination among State and local witness interstate relocation programs and (2) to establish a model Memorandum of Understanding for States and localities that engage in interstate witness relocation. It would also have authorized the Attorney General to expend up to ten percent of the total amount appropriated for drug control and system improvement grants under the Omnibus

Crime Control and Safe Streets Act of 1968 to jurisdictions that have interstate witness relocation programs and that have substantially followed the model Memorandum of Understanding. On February 25, 1998, WPIRA passed the House of Representatives 366 to 49. Unfortunately, it failed to win the approval of the Senate Committee on Judiciary.

In addition to witness assistance and protection initiatives/programs, the State of Maryland, under Governor Ehrlich's leadership, has devoted substantial resources to assist local prosecutors in Maryland to convict violent criminals. For example, the State of Maryland funds nine prosecutors in the Homicide Division of the Baltimore City State's Attorney's Office, and provides all of the funding for the City's Firearms Investigative Violence Enforcement Division (eleven prosecutors and four support staff members), which prosecutes all gun prosecutions in Baltimore City.

The Dawson Family tragedy and the recent firebombing of a community activist's home in Harwood are tragic examples of witness intimidation in Maryland. Professor Michael Milleman of the University of Maryland School of Law, testifying in support of Governor's Ehrlich witness intimidation legislation, stated, "this is civil rights legislation." Members of this subcommittee, we indeed have here a civil rights matter: people have a right to not live in fear. Governor Ehrlich and I remain committed to working with our federal partners, this subcommittee and other members of Congress, along with local law enforcement to examine ways to strengthen the federal, state and local responses to witness intimidation and enacting thoughtful and meaningful laws to counteract and defeat these domestic, local terrorists.

Mr. Chairman, thank you for the opportunity to participate in these proceedings. I look forward to any questions you may have.

# # #